IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 19281 of 2004(S)

OA.937/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. UNION OF INDIA REP.BY THE
GENERAL MANAGER, SOUTHERN RAILWAY,
HEADQUARTERS OFFICE, PARK TOWN, CHENNAI-3.

2. THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.

3. THE DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.

BY ADV. SRI.MURALEEDHARA KAIMAL, SC FOR RAILWAY

RESPONDENTS:
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1. K.VELAYUDHAN, S/O. APPU,
RETRENCHED CASUAL LABOURER,
SOUTHERN RAILWAY, PALGHAT DIVISION,
R/O. KIZHEPATT HOUSE P.O., KADALUNDI NAGAR,
MALAPPURAM DISTRICT.

2. CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM.

BY ADV. SRI.T.C.GOVINDA SWAMY
SMT.D.HEERA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/09/2007 ALONG WITH WPC NO. 13250 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 19281/2004.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE OA. NO. 937/03 FILED BEFORE THE CAT/ERNAKULAM BENCH DT. 18/11/03.

EXT.P2. COPY OF THE STATEMENT FILED IN THE ABOVE CASE DATED –JANUARY, 2003.

EXT.P3. COPY OF THE JUDGMENT IN OA NO. 77/03 OF CAT/ERNAKULAM BENCH.

EXT.P4A. COPY OF THE INSTRUCTIONS REGARDING THE AGE LIMIT PRESCRIBED BY THE RAILWAY BOARD DT. 25/7/91.

EXT.P4B. COPY OF THE CLARIFICTIONS REGARDING THE AGE LIMIT DT. 20/09/01.

EXT.P5. COPY OF THE IMPUGNED JUDGMENT DT. 18/3/04 IN OA NO. 937/2003.

RESPONDENT'S EXHIBITS NIL.

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) Nos.19281/04 & 13250/06

Judgment

Balakrishnan Nair, J.

WPC NO.19281/04

The petitioners are the respondents in OA No.937/03 on the files of the CAT, Ernakulam Bench. The 1st respondent herein was the applicant. The brief facts of the case are the following :

2. The first respondent is a retrenched casual labourer, having casual serve of 1745 days. But, he was treated as one, having only 18 days' casual service and therefore, in the list of retrenched casual labourers, he was shown as Sl No.1989, though, he was eligible to be included as Sl No.13. So, he filed OA No.61/99 for appropriate placement in the said list. Pursuant to the direction of this Court, the 1st respondent's claim was considered and he was placed in the seniority list at 12(a), above Sl No.13. In the meantime, many of his juniors were absorbed in the Group D cadre. When his claim was overlooked, even after the re-arrangement in the seniority position, he filed OA

No.49/03, seeking a declaration that he is entitled to be considered for re-engagement and absorption in Group D post in accordance with his position in the seniority list. The tribunal allowed the OA as per Judgment dated 18.06.2003, which is produced as Annexure A3 to the OA, a copy of which is produced as Ext.P1 in this Writ Petition. The operative portion of the said Judgment reads as follows :

> "In the conspectus of facts and circumstances, the OA is allowed and direct the respondents to consider the absorption of the applicant on a group D post on par with his juniors in the seniority list of Live Casual Labour Register, who was absorbed earlier subject to the pre-appointment formalities like screening etc. and that if the applicant is found suitable for appointment, eh should be given notional seniority with effect from the date on which his immediate junior at Sl.No.13 has been absorbed in the casual labour service and place below in the merit/merged list as No.12 on Group D post. The applicant will not be entitled to any

arrears of pay and allowances and other monetary benefits. This direction shall be complied within a period of three months from the date of receipt of a copy of this order"

In obedience to the above direction, the 1st respondent's claim for absorption was considered and rejected by Annexure A4 order, annexed to Ext.P1 OA. It was held in Annexure A4 that though the petitioner is a member of the Scheduled Caste, he has crossed the age of 45 and therefore, he cannot be absorbed in service, in view of the Railway Board's letter dated 20.09.2001. Challenging the said order, OA No.937/03 (Ext.P1) was filed. The respondents resisted the application by filing Ext.P2 reply statement.

3. The Tribunal, after hearing both sides, held that the age limit was not applicable as the Rules governing age limit were not being enforced in 1999, when the 1st respondent's juniors were absorbed in service. The Tribunal also relied on its Judgment in OA No.77/03, in which, this specific contention regarding age limit, was considered and the stand of the Railways was overruled. Finally, on the basis of the said finding, the OA was allowed, issuing the following directions :

"In the result and in the light of what is stated above, the application is allowed in part. The impugned order Annx.A4 is set aside. Declaring that the respondents are liable to consider the applicant for absorption on a Group-D post with benefit of notional seniority and fixation of pay with effect from the date on which the Sl.No.13 in the seniority list of retrenched casual labourer was appointed on a Group-D post, I direct the respondents to consider the appointment of the applicant on a Group-D post with effect from the date of appointment of S.No.13 in the seniority list of retrenched casual labourers and if he is screened in and if there are no circumstances which would render him unsuitable for appointment, to consider his appointment with effect from the said date and to grant the notional fixation of pay and seniority as aforesaid. The above exercises shall be completed and issue orders in that regard as expeditiously as possible

and not later than six weeks from the date of receipt of a copy of this order. The applicant will not be entitled to any arrears of pay, etc. No costs"

This Writ Petition is filed, challenging the said order, which is produced as Ext.P5. According to the petitioners herein, who were the respondents in the OA, the prescription of age limit, contained in the Circular of the Railway Board dated 20.09.2001 is binding and the petitioner who has crossed the age limit of 45 cannot be absorbed in service. His date of birth is 01.06.1950 and therefore, in 1999, he was aged 49. Since he has already crossed the age limit of 45, he could not have been considered for absorption. So, the petitioners pray for quashing Ext.P5.

4. Heard. The only disqualification of the 1st respondent is that he crossed the upper age limit. As rightly pointed out by the learned counsel for the respondents, the said contention was never raised in OA No.49/03. Had it been raised, the said contention would have been overruled also as evident from the Judgment in OA no.77/03, which is quoted in Ext.P5 Judgment.

5. It is common case that the Judgment in OA No.49/03 has become final and therefore, both sides are bound by it. Further, whether the application of age limit under the Railway Board's letter dated 20.09.2001 can be made applicable to absorptions to be made before the said date, has been considered by the Division Bench of this Court in Writ Petition (C) No.30832/04. In the said Judgment, the decision of the Tribunal to ignore the age limit in the matter of absorption of casual labourers has been upheld. We are in respectful agreement with the said decision of the Division Bench. We find no reason to interfere with the view taken by the Tribunal in the impugned order that the absorption with retrospective effect from a date antecedent to 20.09.2001 cannot be rejected, relying on the letter of the Railway Board issued on the said date. Therefore, the challenge against Ext.P5 is repelled and the Writ Petition is accordingly dismissed.

Writ Petition (C) No.13250/06

6. This Writ Petition is filed, challenging the last sentence in the aforementioned order of the Tribunal in OA No.937/03, which says that the

applicant who is the writ petitioner herein, is not entitled to any arrears of pay etc. The petitioner points out that the Judgment in OA No.49/03 has become final. The said Judgment should have been implemented within three months from 18.06.2003, the date of that Judgment. If it was rightly implemented, he would have got the arrears of salary with effect from the date of that order. Since the said Judgment has become final, the present direction issued by the Tribunal in the last sentence of Ext.P5 Judgment produced in Writ Petition (C) No.19281/04 is untenable. We are in full agreement with the above contention of the learned counsel for the petitioner. Since the Judgment in OA No.49/03 has become final, in any view of the matter, the petitioner is entitled to get arrears of salary with effect from 18.09.2003. It is so declared. The direction in the last sentence of Ext.P5 that the applicant is not entitled to get arrears of salary, is vacated.

7. The learned counsel for the petitioner submitted that Ext.P5 order has been implemented by the Railways by order dated 20.08.2004 and he has been absorbed with effect from 07.05.1997. So, the petitioner shall be granted

arrears of salary from 18.09.2003 within two months from the date of receipt of a copy of this Judgment.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

19.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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